



June 27, 2014

To: Executive Board

Subject: **Disadvantaged Business Enterprise (DBE) Program Goal**

Recommendations

Authorize the Executive Director to conduct a public hearing to solicit input on the continued suitability of Foothill Transit's DBE goal of six percent.

Analysis

DOT regulations require that each public entity receiving DOT funding establish an overall DBE goal every three years. In 2011, the Executive Board authorized the establishment of a revised Foothill Transit DBE goal of six percent, complying with the rules established by the Federal Transit Administration (FTA) on January 28, 2011. This figure was calculated based on the number of DBE firms listed in the California Unified Certification Program (UCP) directory and identified as ready, willing and able to perform work on Foothill Transit's planned federally-funded projects. The methodology includes utilizing data of available firms to provide services utilizing the 2010 Census Data on County Business Patterns for Los Angeles County and the California UCP. The UCP provides access to all registered Disadvantaged Business Enterprises from throughout the state. Both of these sources support analyzing data utilizing the North American Industry Classification System (NAICS) to match the types of industries that will be used for the federally funded projects.

In the coming year, work will be underway to pursue the development of the Azusa Park & Ride facility. In addition to the services of a construction contractor, the services of a labor compliance consultant and materials testing and inspection consultant, among others will be needed. This project will be funded using federal Section 5307 funds. The public will be notified of Foothill Transit's proposed DBE goal and the public hearing, tentatively scheduled for August 21, 2014 in West Covina through classified ads placed in the San Gabriel Valley Tribune, the Inland Valley Daily Bulletin, La Opinion, and the Los Angeles Times. The proposed six percent figure was calculated using a consultative process that included input from local small business owners during conversations at local Chamber of Commerce events and other Small Business events.

Staff will lower, raise, or keep unchanged the proposed DBE goal of six percent, based on input received during the public outreach process and return to the Executive Board with a final recommendation regarding Foothill Transit's DBE goal. The goal will then be widely published using a variety of means, including but not limited to Foothill Transit's website and through classified ads placed in the San Gabriel Valley Tribune, the Inland Valley Daily Bulletin, La Opinion, and the Los Angeles Times.



As provided for in the federal regulations, Foothill Transit's DBE program would only apply to its DOT-assisted projects with the exception of bus purchases. Applicable state and local requirements and regulations related to affirmative action, as modified by the California Civil Rights Initiative (Proposition 209), apply to an organization's state and local contract projects, but not to its DOT-assisted projects. Proposition 209 prohibits the granting of preferential treatment in public contracting based on an individual's or firm's race, sex, color, ethnicity or national origin.

On May 1, 2006 the California Department of Transportation ordered a change in the administration of DBE participation, implementing a DBE race-neutral program. The action came as a result of a Ninth Circuit Court of Appeals decision mandating that evidence of discrimination in the transportation contracting industry must be documented in order to implement a DBE race-conscious program. The race-neutral DBE Program may be an interim step, pending the results and availability of a disparity study to guide the administration of the DBE Program in accordance with 49 CFR Part 26.

Staff will continue to conduct outreach to small businesses, as well as to certified and prospective DBE vendors in order to meet its annual goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes occasions where a DBE is awarded a prime contract through customary competitive procurement procedures and when a DBE firm is awarded a subcontract on a prime contract that does not have a DBE goal.

In addition, work is underway to evaluate whether the results of a Disparity Study that was adopted by L.A. Metro in 2012 can be adapted to Foothill Transit's projects and vendor community and whether implementing a race-conscious DBE program at Foothill Transit is appropriate. Adoption of a race-conscious DBE program would allow Foothill Transit to implement contract goals on its DOT-assisted projects, and may help the organization achieve its DBE program goals.

The FTA requires that Foothill Transit perform an analysis that takes into consideration the number of ready, willing and available DBE firms and a consultative process with the DBE community in calculating its triennial federal fiscal year (FFY) 2015 – 2017 DBE goal. That work will be performed in the March to April 2015 timeframe with the results presented to the Executive Board. Staff will then request that the Executive Board authorize the public outreach process prior to returning to the Executive Board with a final recommendation regarding Foothill Transit's FFY 2015 – 2017 DBE goal.



Fiscal Impact

There are some minor costs related to advertising the DBE program goal, contracting opportunities and the enhanced outreach to both DBE and non-DBE vendors. These expenses were included in the Fiscal Year 2014 – 2015 budget.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin McDonald'.

Kevin McDonald
Deputy Executive Director

A handwritten signature in blue ink, appearing to read 'Doran J. Barnes'.

Doran J. Barnes
Executive Director